

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of In the Matter of Constitution
Party of MN - Tammy Houle, Chair

ORDER

v.

St. Anthony VillageFest Parade

On October 1, 2012, Tammy Houle filed a Complaint with the Office of Administrative Hearings alleging that Respondent Saint Anthony VillageFest Parade violated Minn. Stat. § 211B.205.

The above-entitled matter came on for a probable cause hearing as provided by Minn. Stat. § 211B.34, before Administrative Law Judge Eric L. Lipman on October 4, 2012.

Tammy Houle, Chair of the Constitution Party of Minnesota, Complainant, appeared on her own behalf and without counsel. Kathy Morales-Mayfield, Coordinator of the St. Anthony VillageFest Parade, appeared on behalf of the Respondent.

During the October 4 hearing, the parties agreed that, following the receipt of one additional exhibit from the Respondent, a three-judge panel could resolve the dispute based upon the record that was developed at the probable cause hearing. The hearing record closed following the receipt of an additional exhibit from Ms. Morales-Mayfield on October 5, 2012. Additionally, the Panel agreed to accept, after the initial close of the hearing record, a subsequent filing from St. Anthony VillageFest Parade as to the willfulness of the claimed violation.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum, the three-judge panel concludes that Respondent Saint Anthony VillageFest Parade violated Minn. Stat. § 211B.205. Further, the panel concludes that an administrative penalty in the amount of six hundred dollars (\$600.00) is an appropriate sanction.

ORDER

IT IS HEREBY ORDERED THAT:

1. Having violated Minn. Stat. § 211B.205, Respondent Saint Anthony VillageFest Parade shall pay a civil penalty of six hundred dollars (\$600) by December 31, 2012.

Dated: October 26, 2012

s/Eric L. Lipman

ERIC L. LIPMAN
Presiding Administrative Law Judge

s/Ann C. O'Reilly

ANN C. O'REILLY
Administrative Law Judge

s/Gary P. Mesna

GARY P. MESNA
Administrative Law Judge

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

I. Factual Background

The 2012 Saint Anthony VillageFest Parade had a tiered fee structure governing persons and entities that wished to march in the parade. The parade application stated:

In order to help with expenses for the parade, as in previous years, we are charging a nominal fee for participation in the Parade. Fees are as follows:

\$10.00 for all non-profit units, \$25.00 for businesses and \$150.00 for politicians¹

The Constitution Party's endorsed candidate for election to the Minnesota House of Representatives from District 41-B, Tim Utz, was denied the opportunity to participate in the Saint Anthony VillageFest Parade because he did not remit a \$150.00 application fee. Mr. Utz's tender of a \$25.00 application fee was refused by parade organizers. Mr. Utz did not participate in the 2012 parade.²

Minn. Stat. § 211B.205 provides that:

If a public parade allows candidates, a candidate must be allowed to participate for a fee that is not greater than the amount that is charged to other units participating in the parade.

Asserting that any violation of the statute was not intentional, the parade organizers submitted into the record examples of other local parades with tiered application fees – with some, like the Saint Anthony VillageFest Parade, charging higher entrance fees to candidates for public office than other entrants.³

II. Analysis

The plain meaning of the statute was to restrict parade organizers from charging candidates for offices more than the amount that is charged to other units participating in the parade. It is undisputed that the Saint Anthony VillageFest Parade charged candidates for public office more than it charged non-profit entities and for-profit businesses. A violation of Minn. Stat. § 211B.205 is established on this record.

In order to ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, and likewise consistency with the requirements of Minn. Stat. § 14.045, OAH panels use a “penalty matrix” to guide decision-making.⁴ The matrix categorizes violations based upon the willfulness of the misconduct and the impact of violation upon others. In this instance, because the exclusion of Mr. Utz was based upon a “negligent” and “ill-considered” reading of the statute and had impacts that are now difficult to cure, a penalty at the low-end of the \$600 to \$1,200 range is appropriate in this case.

E. L. L. , G. P. M., A. C. O.

¹ See, Complaint, Attachment 1.

² See, Testimony of Tammy Houle.

³ See, Respondent's Supplemental Exhibits (October 17, 2012).

⁴ See, Penalty Matrix (<http://mn.gov/oah/administrative-law/filing/fair-campaign/process/>); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. App.), *review denied* (Minn. 2007).